

The claimant testified that he voluntarily quit his position with the respondent because he was being worked outside his restrictions. The claimant is requesting temporary total disability from June 27th, 2013 through August 1st, 2013. At that time, the only restriction that the claimant had was that he could not return to work at his normal position as a derrick hand. The claimant testified that he was working prior to June 27th, 2013, and not as a derrick hand. The claimant was not clear on what his restrictions actually were. He is also requesting temporary total disability from September 1st, 2013 forward. As of September 23rd, 2013, the claimant had restrictions of continuous lift/carry of 20 pounds; occasional lift/carry of up to 50 pounds; no lift/carry over 50 pounds; continuous push/pull of up to 50 pounds; occasional push/pull up to 75 pounds; no push/pull over 75 pounds; occasional

kneel/squat and occasional stair climb. The claimant testified that he worked until the end of August for a different employer. That the pain in his leg increased because of his work and he terminated that employment. The claimant failed to prove that the job he was performing was outside his restrictions.

The claimant has not been provided any off work slips for the period of times he is requesting temporary total disability. He has been provided restrictions and has worked at 2 other jobs which he chose to quit. K.S.A. 44-510C(b)(2)(A) states in relevant part that "A release issued by a health care provider with temporary restrictions for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, provided that if there is an authorized treating physician, such physician's opinion regarding the employee's work status shall be presumed to be determinative." It is clear that the claimant is capable of engaging in substantial and gainful employment as he has been employed at 2 other jobs and voluntarily quit both. The claimant has failed to meet his burden of proof that he is entitled to temporary total disability and his request is therefore denied.

ISSUES

Claimant claims the ALJ erred in finding he failed to prove he was temporarily and totally disabled from June 27, 2013, through August 1, 2013, and from September 1, 2013, forward.

Respondent contends claimant's application for review should be dismissed for lack of jurisdiction, pursuant to K.S.A. 44-534a(a)(2) and K.S.A. 44-551(i)(2)(A). In the alternative, respondent maintains the ALJ's Order should be affirmed.

The issues for Board review are:

1. Does the Board have jurisdiction to review the ALJ's preliminary hearing Order?
2. If so, is claimant entitled to temporary total disability (TTD) compensation?

PRINCIPLES OF LAW & ANALYSIS

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only those issues listed in K.S.A. 44-534a(a)(2), which are: (1) whether the employee suffered an accident, repetitive trauma or resulting injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice is given, or (4) whether certain defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the

claim under the Workers Compensation Act.¹ The Board can also review preliminary decisions when a party alleges the ALJ exceeded his or her jurisdiction.²

The issue of whether a worker is entitled to TTD, and the amount of the weekly TTD benefits, are not generally considered jurisdictional. An issue regarding whether a worker is entitled to TTD is fully within the authority granted to ALJs.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

K.S.A. 2012 Supp. 44-510c(b)(2)(C) provides:

If the employee has been terminated for cause or voluntarily resigns following a compensable injury, the employer shall not be liable for temporary total disability benefits if the employer could have accommodated the temporary restrictions imposed by the authorized treating physician but for the employee's separation from employment.

Since the review requested by claimant does not raise an issue of compensability enumerated in K.S.A. 44-534a(a)(2) and there has been no showing the ALJ exceeded her jurisdiction, the application for Board review must be dismissed for lack of jurisdiction.

WHEREFORE, the undersigned Board Member finds that claimant's request for Board review of the December 10, 2013, preliminary hearing Order Denying Compensation entered by ALJ Pamela Fuller is hereby dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this 10th day of February, 2014.

HONORABLE GARY R. TERRILL
BOARD MEMBER

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² K.S.A. 2012 Supp. 44-551(i)(2)(A).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

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Honorable Pamela Fuller, ALJ